TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 604

REGINALD P. RAY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 29, 1936.

CERTIORARI GRANTED FEBRUARY 8, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 604

REGINALD P. RAY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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(Illegible) (Inc.), Printers, Washington, D. C., February 10, 1937.

[fol. 1] UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles Weiser, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 7th day of July in the year of our Lord one thousand nine hundred and thirty-six and of the Independence of the United States the One Hundred and Sixty-first.

Charles Weiser, Clerk. (Seal.)

CRIMINAL DOCKET

Docket ..... Case No. 851

TITLE OF CASE	
THE UNITED STATES vs. J. Crawford Stevens Frederick P. Condit Reginald P. Ray Philip H. Kuss Land Westchester Title & Trust Company	Violation of Using the mails to obtain money & property by means & false representations & conspiracy so to do. U.S. Code Title 18, Sec 338 & 88 Attorney for Defendant:

DATE			PROCEEDINGS	No. of Words	CLERK'S FEES	
					PLAINTIFF	DEFENDANT
APR	29	1935	Filed Indictment.			
MAY	2	1935	J. Crawford Stevens Pleads Not Guilty Bail #3500 granted & PM to give bail			
"	2	1935	Frederick P. Condit " " Bail #3500 granted to PM to give bail			
"	"	"	Reginald P. Ray " " Bail #3500 granted to PM to give bail			
"	"	"	Philip H. Kuss " " Bail #3500 granted to PM to give bail			
"	"	"	Westchester Title & Trust Co " " Ordered			
			entered by the Court - Hulbert J.			
May	7,	1935	Filed notice of appearance as to Frederick P. Condit by Dwight F. McKee.			
"	"	"	Filed notice of appearance for deft. Philip H Kuss by Fogarty & Devlin. Atty.			
"	"	"	" " " " " J. Crawford Stevens by Fogarty & Devlin. Atty.			
"	"	1935	" " " " " Reginald P. Ray, by Lynch, Kahn & Reid. Atty			
"	"	1935	affidavit and order to show cause for an order			
			directing U.S. to serve deft. Reginald P. Ray with a			
			bill of particulars etc. - Motion granted with			
			exception & certain paragraphs denied as to other (See memo endorsed)			

J. Crawford Stevens
Frederick P. Condit
Reginald P. Ray
Philip H. Kuss and
Westchester Title & Trust Company

False representation & Conspiracy
to do do.
U.S. Code Title 18, Sec 338 & 88

Attorney for Defendant:

DATE Month	Day	Year	PROCEEDINGS	No. of Words	CLERK'S FEES Plaintiff	Defendant
APR	29	1935	Filed Indictment.			
MAY	2	1935	J. Crawford Stevens Pleads Not Guilty Bail $3500. ourselves & Pty to give bail			
MAY	2	1935	Frederick Condit Pleads Not Guilty, Bail $3500 fixed to PM to justify			11
			Reginald P Ray Pleads Not Guilty. Bail $3500 fixed to PM to justify			
			Philip H. Kuss Pleads Not Guilty Bail $3500 fixed to PM to give bail			4
			Westchester Title & Trust Co Pleads Not Guilty Ordered			
			entered by the Court. Hulbert J.			
May	7,	1935	Filed notice of appearance of Atty as to Frederick			
			P Condit by Dorgel & McKee.			
"	8	"	Filed notice of Appearance for deft. Philip H. Kuss by Fogarty & Devlin. Atty.			"
"	10	"	" " " " " J. Crawford Stevens by Fogarty & Devlin. Attys.			
June	14	1935	" " " " " Reginald P. Ray, by Lydeck, Cohen and Reed. Atty			
July	10	1935	affidavit and order to show cause for an order			
			directing U.S. to serve deft. Reginald P. Ray with a			
			bill of particulars etc. - Motion granted with			
			respect to certain paragraphs; denied as to other (See memo endorsed)			
			Bondy J.			

Continued on Page 859½ Case No. 8502

8 & 9	1/2		United States vs J. Crawford Stevens et al C 96-881
July	12,	1935	Filed Recognizance J. Crawford Stevens $3500 Continental Cas Co
"	12,	"	" " Reginald P. Ray $3500 Continental Cas. Co.
"	12,	1935	" " Philip H. Kuss $3500 National Surety Corp.
"	12,	"	" " Frederick P. Condit $3500 National Surety Corp.
Aug.	14,	1935	Filed affidavit and notice of motion to reopen motion for particulars. Memo Ent Bondy J. (See Memo)

(Continued on Page 1106)

Docket ..... Case No. 860

Page
Docket 1106

CRIMINAL DOCKET

Case No. 161

TITLE OF CASE	
THE UNITED STATES *vs.* J Crawford Stevens et al	Violation of C96-881 Attorney for Defendant:

DATE Month	Day	Year	PROCEEDINGS	No. of Words	CLERK'S FEES Plaintiff	Defendant
Oct	9,	1935	Filed order granting motion for a bill of particulars, so far as they are now known to the United States, etc. as to defendant Reginald P Ray and Order granting motion for re-arrangement of the above motion and further order that the bill of particulars be modified. Bondy J.			
Feb	24	1936	Filed Stipulation between attorney for the United States and the deft. Frederick O Londit that the motion for Bill of Particulars be and hereby is settled on certain terms and conditions etc			
"	24	"	Filed Bill of Particulars and affidavit of service that the Bill of particulars was served on Lynch, Cahn & Reed, attorneys for deft. Reginald P. Ray.			
"	24	"	Filed additional Bill of Particulars in answer to demand by defendant Frederick O. Londit			
Mar	7	1936	Filed notice of motion, affidavit and demurrer to indictment on behalf of Reginald P. Ray. (Name endorsed)			
Mar	7	1936	Filed affidavit of Reginald P. Ray in support of motion for leave to file the demurrer denied - settle order.			
			Filed Order denying motion of Reginald P Ray to inspect			

Case No. 1 2

Violation of

Attorney for Defendant:

DATE			PROCEEDINGS	No. of Words	CLERK'S FEES
					PLAINTIFF / DEFENDANT
Mar	7	1936	Filed notice of motion, affidavit and demurrer & indictment in behalf of Reginald P. Ray. (Memo. endorsed)		
Mar	7	1936	Filed affidavit #7059 by Byron D. - Motion for leave & file the demurrer denied - Still order.		
March 11, 1936			Filed Order denying motion of Reginald P Ray for leave to file demurrer to the indictment &c. - (Byrne J.)		
May	14	1936	Filed Amended Bill of Particulars		
May	15,	1936	Filed recognizance for J. Crawford Stevens $1,000 Continental Casualty Co		
"	15,	1936	" " Reginald P Ray $1,000 Continental Casualty "		
May	5,	1936	Trial begun as to all defts before Patterson D.J. On motion of defts counsel bails are reduced to $1000.00 each each deft. Motion granted no opposition Patterson D.J.		
May	6,	1936	Trial cont'd - motion to dismiss denied - Exc -		
			Trial cont'd on the following dates May 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 June 1		
June	2	1936	Trial cont'd - govt rests		
June	3,	1936	" " Motions made by defts - Denied Exc -		
			Trial cont'd on following dates June 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24		
			Motions by counsel of defts to dismiss the indictment and for a direction of an acquittal by the jury - Denied Exc -		
June	25	1936	Summation by defts		
June	26	1936	Summation by govt - Charge - Jury retires - Verdict as to some of the defendants. Westchester R.R. Co, J Crawford Stevens and Reginald P. Ray - guilty on all twenty counts as charged in the indictment. Philip N. Kunz guilty on counts 1, 2, 3, 4, 7, 8, 11, 14, 15, 16, 19 & 20 as charged with recommendation to the court for leniency. Jury polled - Bail cont'd. Sentences adj'd - Jury ordered returned to the jury room to further deliberate as to deft Condit - Ordered locked up for the night. To return at 9:30 a.m. June 27, 1936.		
June	27	1936	At 1:25 P.m. Jury report unable to agree as to defendant Condit - mistrial ordered. Jury discharged - Sentences - 6/29/36 - Patterson J.		
June	29	1936	Motion to set aside verdict as to J Crawford Stevens - Motion denied - Exception		
			Motion to set aside verdict as to Philip N. Kunz - Motion denied - Exception		
			Motion to set aside verdict and for a new trial as to Reginald P Ray - Motion denied - Exception		
			Motion to set aside verdict in fact as to Reginald P. Ray. Motion denied - Exception		

Continued on Page 1105½

Page 110 ~~Ex~~

LE OF CA

UNITED STATES
vs.
J. Crawford Stevens ~~dead~~
Frederick P Conduit
Reginald P. Ray and
Philip N Kuss
Westchester Title & Trust Co.

C-96-881

Violation of

Attorney f(Defendant:

DATE Month	Day	Year	PROCEEDINGS	No. of Words	CLERK'S FEES Plaintiff	Defendant
June	29	1936	Reginald P Ray. Sentenced to Five (5) years on each of counts 1 to 20 inclusive to run concurrently. Place of confinement to be designated by the Attorney General			
"	29	"	Issued commitment in triplicate as to Defft. Ray.			
"	29	"	J Crawford Stevens sentenced to One year & One day on each of counts 1 to 20 inclusive to run concurrently Place of confinement to be designated by the Attorney General.			
"	29	"	Issued commitment in triplicate as to defft. Stevens			
"	29	"	Philip N. Kuss - Sentenced to - One year and One day on each of counts 1-2-3-4-7-8-11-14-15-16 and 19 and 20 to run concurrently. Execution of sentence suspended. Probation for One year & One day, subject to the standing probation order of this Court - Counts 5-6-9-10-12-13-17-18 as to defft. Kuss dismissed		Counts 1 to 20 $10	
"	29	"	Westchester Title & Trust Co - Fined $1. on each of 20 counts Payment of fines suspended. Patterson J			
"	29	"	Bail as to Ray $2500. pending appeal. Paroled to give bail.			
"	29	"	Bail as to Stevens $2500. pending appeal Paroled to give bail.			

Docket 918

CRIMINAL DOCKET

Case No. 423

TITLE OF CASE

THE UNITED STATES

vs.

J. Crawford Stevens, et al

Cont'd from page 1105½

Violation of

C 96/881

Attorney for Defendant:

DATE			PROCEEDINGS	No. of Words	CLERK'S FEES	
Month	Day	Year			Plaintiff	Defendant
June	30	1936	Filed notice of appeal as to Defendant Reginald P. Ray & J Crawford Stevens (notice sent to Judge Patterson 6/30/36)			5 -

5

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,? :

Plaintiff, :

-against- :

J. CRAWFORD STEVENS, REGINALD P. RAY, :
PHILIP H. KUSS, FREDERICK P. CONDIT, :
and WESTCHESTER TITLE & TRUST COMPANY, :

Defendants. :

- -X

Names and addresses of Appellants:

Reginald P. Ray, 68 Crane Avenue, White Plains, N.Y.

J. Crawford Stevens, 289 Midchester Ave. White Plains, New York.

Name and address of Appellant Ray's attorneys:

Lynch, Cahn & Reed, 199 Main Street, White Plains, New York.

Name and address of Appellant Steven's attorneys:

Fogarty & Devlin, 225 Broadway, New York City.

Offense: Violation of Section 215, Title 18 U.S. C. A. (using the mails to defraud) and section 88, Title 18 U. S. C. A. (conspiracy to use the mails to defraud.)

Date of Judgment: June 29th, 1956

Brief description of judgment or sentence: Verdict of conviction on all twenty counts of indictment;

Sentence of two years on each count, to run concurrently, as to Appellant Ray; sentence of one year and a day on each count to run concurrently as to Appellant Stevens.

Name of prison where now confined if not on bail:

~~Remanded to bail~~, Paroled in custody of attorney

We, the above named appellants, hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Reynold P. Ray
Appellant

J. Gaylord Stevens
Appellant

Dated, June 29th, 1936.

Grounds of appeal:

1. Denial of motion to dismiss the indictment and each count thereof, for failure to state facts sufficient to constitute a crime.

2. Reversible errors of the court in the admission of evidence.

3. Reversible errors of the court in the exclusion of evidence.

4. Denial of motions to withdraw a juror and for a mistrial for prejudicial occurrences during the trial.

5. Denial of motions to dismiss the indictment and to direct a verdict of acquittal, made at the end of the whole case.

6. Reversible errors in the charge of the court.

7. Reversible errors in the refusal of the court to charge as requested.

8. Denial of the motion to set aside the verdict and for a new trial.

9. Denial of the motion in arrest of judgment.

Sir:

PLEASE TAKE NOTICE that a

of which the within is a copy, was duly entered herein in the office of the Clerk of the City of

on the day of 193 .

Dated, 193 .

LYNCH, CAHN & WEED

ATTORNEYS FOR

OFFICE AND POST OFFICE ADDRESS

BAR BUILDING

WHITE PLAINS, N. Y.

To .

Attorney for

C96-881

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

J. CRAWFORD STEVENS et al,

Defendants.

Duplicate

NOTICE OF APPEAL

LYNCH, CAHN & WEED

ATTORNEYS FOR Defendant Ray

BAR BUILDING

WHITE PLAINS, N. Y.

Fogarty & Phelan

attorneys for Defendant Ray

U.S. DISTRICT COURT FILED JUN 30 1936 S.D. OF N.Y.

U.S. CIRCUIT COURT OF APPEALS SECOND CIRCUIT FILED AUG 6 1936 CLERK

COPY RECEIVED JUN 30 1936 Lamar Hardy U.S. ATTORNEY

by Walter Brauer Spec. Asst. Atty. Gen'l

[fol. 10] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

C—96-881

UNITED STATES OF AMERICA, Plaintiff-Appellee,

against

REGINALD P. RAY, Defendant-Appellant

NOTICE OF MOTION TO DOCKET AND DISMISS APPEAL

SIR:

Please Take Notice that upon the certificate of the Clerk of the United States District Court for the Southern District of New York, dated November 12, 1936, and upon the order of Honorable Robert P. Patterson, Judge of the United States District Court for the Southern District of New York, dated November 2, 1936, and upon the affidavit of Bernard Tompkins, Special Attorney of the United States Department of Justice, sworn to November 12, 1936, hereto annexed, the undersigned will move this Court at the Present Term thereof, held in Room 1705 in the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on November 16, 1936 at 10:30 A. M. or as soon thereafter as counsel can be heard, for an order docketing the above entitled cause and dismissing the same, because of the failure of the defendant-appellant to docket such cause within the time fixed by Rules VIII and IX of the Rules of the Supreme Court in Criminal Cases, and also for the reason that the aforesaid order of Judge Patterson was irregular, informal and insufficient in that [fol. 11] it purported to settle a bill of exceptions which did not comply with Rule IX of the aforesaid Rules of the Supreme Court in Criminal Cases (28 U. S. C. A. Section 723a) and for such other and further relief as this Court may deem proper in the premises.

Dated, New York, N. Y., November 12, 1936.

Yours, etc., Walter Brower, Special Assistant to the Attorney General of the United States. Office & P. O. Address, United States Court House, Foley Square, New York, N. Y.

To Reginald P. Ray, Esq., Appearing in Person, 175 Main Street, White Plains, N. Y.

[fol. 12] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

C—96-881

[Title omitted]

CERTIFICATE OF CLERK

I, Charles Weiser, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the above proceeding was commenced by the filing of an indictment on April 29, 1935 in the United States District Court for the Southern District of New York and that thereafter on June 26, 1936 the Appellant (Defendant Below) Reginald P. Ray was convicted before Honorable Robert P. Patterson, United States District Judge, and a jury and that on June 29, 1936 said Reginald P. Ray was sentenced to a term of imprisonment of two years on each of counts one to twenty, inclusive, to run concurrently.

That thereafter on June 30, 1936 the appellant Ray filed a notice of appeal.

That thereafter on July 27, 1936 the appellant Ray filed an order signed by Judge Patterson extending the time to file the assignment of errors and bill of exceptions to and including November 1, 1936.

That thereafter on November 2, 1936 the appellant Ray filed an order signed by Judge Patterson settling the bill of [fol. 13] exceptions and on the same day filed a bill of exceptions consisting of seven (7) volumes and the assignment of errors.

That other than the above, no orders have been made enlarging or extending the time of the said appellant to docket the cause and file the record in the office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, N. Y., November 12, 1936.

Charles Weiser, Clerk, United States District Court, Southern District of New York. (Seal.)

[fol. 14] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF BERNARD TOMPKINS

STATE OF NEW YORK,
Southern District of New York,
County of New York, ss:

Bernard Tompkins, being duly sworn, deposes and says:

I am a Special Attorney of the United States Department of Justice and, under the supervision of Walter Brower, Special Assistant to the Attorney General of the United States, was in charge of the preparation and trial of the above case.

On June 26, 1936, a judgment of conviction was entered in the United States District Court for the Southern District of New York, Judge Robert P. Patterson presiding, upon the verdict of a jury finding the appellant Reginald P. Ray and J. Crawford Stevens and Philip H. Kuss guilty of a violation of the Mail Fraud Statute and conspiracy (18 U. S. C. A. sections 338 and 88). The jury disagreed as to the defendant Frederick P. Condit.

Thereafter, on June 29, 1936 Judge Patterson ordered the following sentences:

[fol. 15] Reginald P. Ray—2 years imprisonment.

J. Crawford Stevens—1 year and 1 day imprisonment.

Philip H. Kuss—Sentence suspended. Probation for 1 year.

A notice of appeal was filed by the appellant Ray on June 30, 1936. The defendants Stevens and Kuss are not appealing.

On July 27, 1936 Judge Patterson signed an order (Exhibit "A" annexed hereto) extending the time to file and serve the assignment of errors and bill of exceptions up to and including November 1, 1936.

On October 29, 1936 a motion was made before Judge Patterson, brought on by order to show cause, to settle the stenographer's minutes of the trial as and for the bill of exceptions. This motion was denied.

Thereafter, on November 2, 1936 the appellant Ray presented to Judge Patterson five (5) volumes of typewritten

stenographic minutes of the trial, with colloquy of counsel omitted, and two (2) volumes containing the summation of Walter Brower and the charge of the Court and other proceedings after the trial, consisting of 3981 pages in all, and requested that they be settled and signed as the bill of exceptions in the case. This motion was granted and an order dated November 2, 1936 (Exhibit "B" annexed hereto) was signed. Walter Brower, Special Assistant to the Attorney General, opposed this motion for the following reasons:

First. The proposed bill of exceptions was not submitted to him and he had had no opportunity to inspect the proposed bill of exceptions to determine its accuracy or fullness.

[fol. 16] Second. That the proposed bill of exceptions did not comply with Rule IX of the Rules of the Supreme Court in Criminal Cases (28 U. S. C. A. section 723a) in that it was not set forth in condensed and narrative form, although the appellant had had the minutes in his possession for over four months. (Your deponent has been informed by Mr. James A. Trumbull, Jr., of the Southern District Court Reporters, that the stenographic minutes of the trial were supplied to the defendants in the case each day as the trial progressed, except the charge of the Court and the summation of Walter Brower, which were furnished to the appellant Ray on July 30, 1936.)

Third. Judge Patterson was without power on November 2, 1936 to sign the bill of exceptions, inasmuch as the extended time under his order of July 27, 1936 had expired on November 1, 1936, and that the time for docketing the said cause and filing said record in this Court had expired.

Wherefore, your deponent prays that this Court docket the said cause and dismiss the appeal upon the grounds set forth above, and for such other and further relief as may be just and proper in the premises.

No previous application for the relief herein asked has heretofore been made.

Bernard Tompkins.

Sworn to before me this 12th day of November, 1936. John V. B. Merritt, Notary Public, Westchester County. N. Y. Co. Clk's No. 9, Reg. No. 7118. Commission expires March 30, 1937. (Seal.)

[fol. 17] Copy

EXHIBIT "A" TO AFFIDAVIT

At a term of the United States District Court held in and for the Southern District of New York at the United States Federal Courthouse, Borough of Manhattan, City of New York, on the 27th day of July, 1936.

Present: Hon. Robert P. Patterson, U. S. District Judge.

THE UNITED STATES OF AMERICA, Plaintiff,

against

J. CRAWFORD STEVENS, FREDERICK P. CONDIT, REGINALD P. RAY, Philip H. Kuss and the Westchester Title & Trust Company, Defendants

Order

Upon reading and filing the annexed affidavit of Reginald P. Ray, sworn to the 27th day of July, 1936, it is

Ordered, that the time of the defendant Reginald P. Ray to file and serve his assignment of errors and bill of exceptions be and the same hereby is extended to and including the 1st day of November 1,936.

Robert P. Patterson, U. S. D. J.

[fol. 18] Copy

EXHIBIT "B" TO AFFIDAVIT

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

No. C-96881

THE UNITED STATES OF AMERICA, Plaintiff,

against

J. CRAWFORD STEVENS, FREDERICK P. CONDIT, REGINALD P. RAY, Philip H. Kuss, and the Westchester Title & Trust Company, Defendants

Order Settling Bill of Exceptions

R. P. P. It is Hereby Ordered, The Special Assistant to the Attorney General appearing in opposi-

tion, that the foregoing bill of exceptions, consisting of five (5) volumes of the typewritten stenographic minutes of the trial, one (1) volume containing the summation of Walter Brower, Special Assistant United States Attorney General, and one (1) volume containing the charge of the court and other proceedings after the trial, consisting of three thousand nine hundred and eighty-one (3981) pages in all, and containing all the evidence on the trial of this cause, colloquy of counsel being omitted, having been R. P. P. presented within the time allowed to wit, on November 2, 1936 and having been examined, is allowed, sealed, signed and ordered on file as part of the record herein; and it is further

Ordered, that the originals of any exhibits R. P. P. marked in evidence or for identification at the trial shall be considered a part of the bill of exceptions with the same force and effect as if complete copies thereof were incorporated therein, and that either [fol. 19] party may, upon the argument in any court of review, present the originals of each and all such exhibits.

November 2, 1936.

(Signed) Robert P. Patterson, U. S. D. J.

[fol. 20] Motion granted.

M. T. M. L. H. T. W. S.

Nov. 25/36.

[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF REGINALD P. RAY, ON MOTION TO DOCKET AND DISMISS APPEAL

STATE OF NEW YORK,
County of New York, ss:

Reginald P. Ray, being duly sworn, deposes and says:

I am the defendant-appellant in the above captioned cause.

The order signed by Judge Paterson on July 27, 1936 extended the time within which to settle and file the bill of exceptions and to file the assignment of errors "to and in-

cluding the first day of November, 1936". About the middle of October it became apparent that the condensation of the record, because of its size and the financial handicaps under which I am laboring, could not be completed by November 1st. An application was, therefore, made to Judge Patterson on Tuesday, October 20th for an order further extending the time. At that time Messrs. Brower and Tompkins, representing the United States, suggested that it was beyond the power of the trial judge to further extend the time.

Upon investigation I ascertained that there were decided cases, in other circuits, construing Supreme Court Rule IX in criminal cases, holding that a further extension could not be granted under the circumstances of my case. The order allowed by Judge Patterson was, therefore, not entered.

[fol. 22] Realizing that I was virtually out of court if further time was not obtained, I immediately sought relief in the Circuit Court of Appeals. On Thursday, October 22nd, Judge Manton signed an order to show cause why an extension should not be granted by this court. The motion was argued on Tuesday, October 27th before Judges Manton, L. Hand and Swan. At that time this court declared itself powerless to grant further time, or to give any other relief. The question of the power of the trial judge to order a further extension was raised and, while expressing no opinion, the judges present indicated they had grave doubt as to the existence of such power. It was thereupon suggested by them that, under the circumstances of my case, in order to avoid any jurisdictional question, an application be made to the trial judge for an order settling the typewritten stenographer's minutes of the trial as the bill of exceptions and that thereafter an application might be made to this court for time to prepare and print a condensed record.

Pursuant to this suggestion, a motion was made on Thursday, October 29th before Judge Patterson, brought on by order to show cause, signed on Wednesday, October 28th, to settle the stenographer's minutes of the trial as and for the bill of exceptions. This motion was argued on the morning of October 29th, the United States submitting a memorandum in opposition thereto. Judge Patterson reserved decision to give me an opportunity to sub-

mit an answering memorandum which I did late in the afternoon. He thereupon denied the motion.

Thereupon on Friday, October 30th, an informal conference was held in Judge Manton's chambers at which Judge Patterson and Messrs. Brower and Tompkins were present. At that time Judge Patterson suggested that if the colloquy of counsel appearing in the typewritten stenographer's minutes was stricken therefrom that Supreme Court [fol. 23] Rule 8, which required a condensation of testimony might be complied with and that since my time expired on Sunday, November 1st, such an application might be made the following day. Messrs. Brower and Tomkins agreed to appear on Monday morning without a formal notice or order to show cause. I thereupon spent the week-end in going through the typewritten minutes and striking all colloquy of counsel therefrom with a red pencil. On Monday, November 2nd, a motion was made before Judge Patterson to settle the typewritten minutes thus condensed as and for the bill of exceptions. This motion was granted. Accordingly the bill of exceptions and assignment of errors were filed with the clerk of the District Court for the Southern District of New York on the afternoon of November 2nd.

Reginald P. Ray.

Sworn to before me this 16th day of November, 1936. Leo. Cohen, Notary Public. N. Y. Co. Clks. No. 156, Reg. No. 8C169. Bronx Co. Clks. 13 Kings Co. Clks. 131. Commission expires March 30, 1938.

[fol. 24] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

UNITED STATES, Plaintiff-Appellee,

vs.

REGINALD P. RAY, Defendant-Appellant

ORDER DISMISSING APPEAL—Filed December 4, 1936

A motion having been made herein by counsel for the appellee to dismiss the appeal for lack of jurisdiction;

Upon consideration thereof it is
Ordered that said appeal be and hereby is dismissed.
Further ordered that a mandate issue accordingly.
Wm. Parkin, Clerk.

[fol. 25] [File endorsement omitted]

[fol. 26] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

C—96-881

[Title omitted]

PETITION FOR REHEARING—Filed December 9, 1936

To the Honorable United States Circuit Court of Appeals for the Second Circuit:

The petition of Reginald P. Ray respectfully shows:

1. Your petitioner on the 27th day of June, 1936 was convicted in the United States District Court for the Southern District of New York before the Honorable Robert P. Patterson and a jury of a violation of the Mail Fraud Statute and of conspiracy (18 U. S. C. A. sections 338 and 88).

2. The trial comprehended a period of approximately eight weeks and the transcript of testimony therein comprises about four thousand pages. Over five hundred exhibits were received in evidence.

3. Your petitioner was represented at the trial by Monroe Cahn, Esq., of Messrs. Lynch, Cahn & Weed, of White Plains.

4. Within five days after said conviction, a notice of appeal was filed.

5. Due to the voluminous record, it was impossible to prepare the bill of exceptions within the thirty days allotted by the rules of court and the obtaining of an extension was therefore imperative. The trial judge was away on vacation and an order extending the time within which to settle and file the bill of exceptions was accordingly not

entered until the 27th day of July, 1936. On said date [fol. 27] Judge Patterson granted an extension "to and including the 1st day of November, 1936", which was a Sunday.

6. Financial difficulties made it impossible for your petitioner to engage his trial counsel to conduct the appeal herein and it therefore became necessary to conduct his own appeal with such assistance as your petitioner's finances would permit. Although your petitioner has been a member of the bar since 1904 he has never been in active practice.

7. During the first week of August, 1936, your petitioner succeeded in obtaining the assistance of Messrs. Richard E. Silberman and Benjamin L. Stern, two newly admitted members of the New Jersey bar. The said Messrs. Silberman and Stern were to prepare an assignment of errors and a brief.

8. Your petitioner's new assistants had not been present at the trial and it was thus necessary for them to read the voluminous transcript of testimony with great care in order to ascertain the errors to be assigned.

9. On various dates during August of 1936 your petitioner endeavored to communicate with Mr. Walter Brower and Mr. Bernard Tompkins, who conducted the prosecution for the Government, in order to arrange a meeting with them. The cooperation of the Government was essential in arriving at any agreement as to the form and the contents of the bill of exceptions.

10. Although there was an apparent willingness to cooperate on the part of Mr. Brower and Mr. Tompkins, circumstances prevented a meeting with them until about the 15th day of September, 1936. At said time your petitioner, together with Mr. Silberman and Mr. Stern, discussed with Mr. Brower and Mr. Tompkins, the question of condensing the testimony. At this meeting Mr. Brower and Mr. Tompkins expressed the opinion that since one of the assign- [fol. 28] ments of error was the failure of the trial judge to direct a verdict and that the weight of evidence would be argued, it would not be practicable to attempt a condensation of the testimony and were of the opinion that the entire

record would be necessary. However, it was suggested that a sample of the condensation of the testimony of a few witnesses be submitted to them for their consideration. Accordingly, the testimony of several witnesses, consisting of approximately 600 pages of the stenographer's transcript, was condensed and submitted to Mr. Brower and Mr. Tompkins. Late in September, Mr. Tompkins informed Mr. Silberman and Mr. Stern that upon considering the samples submitted, they had decided that a condensation of this character was practicable. They stated that they would make very few changes; that they were redictating the condensation submitted; and that we should proceed to condense the remainder of the testimony with the exception of the testimony of the defendant Ray, your petitioner, which they felt would have to be retained intact. Thereafter, the work of condensing the record progressed as rapidly as possible and by the middle of October another 1,000 pages was ready for submission. The material submitted to Mr. Brower and Mr. Tompkins for their approval has ever been returned with corrections.

11. A few days prior to October 20, 1936, when it was apparent that no condensation could be agreed upon within the time previously allowed, another meeting was had with Mr. Brower and Mr. Tompkins, at which time they agreed that while they would not consent they would not oppose an application to the trial judge for a further extension. Accordingly, on October 20, 1936, your petitioner, applied to the trial judge for an order extending the time within which to settle and file the bill of exceptions and assignment of errors herein for a further period of thirty days. At the suggestion of Mr. Tompkins, the time was enlarged to two months and the trial judge stated that he would grant such [fol. 29] extension. The Government stated that they would not oppose the granting of the relief sought but would not consent thereto for the reason that in their opinion the trial judge had no jurisdiction to allow further time after the original thirty days had expired. (Rules of the Supreme Court in Criminal Cases, Rule IX.)

12. Upon investigation, it was found that while there was no case in this circuit construing Rule IX, there were decisions in other circuits holding that the trial judge has no

power to grant an extension once the thirty day period has elapsed.

Yep v. U. S., 81 Fed. (2d) 637 (C. C. A. 10th);
Gallagher v. U. S., 82 Fed. (2d) 721 (C. C. A. 8th);
Wolpa v. U. S., 84 Fed. (2d) 829 (C. C. A. 8th);
Cusamano v. U. S., 85 Fed. (2d) 132 (C. C. A. 8th);
Spero v. U. S., 85 Fed. (2d) 134 (C. C. A. 8th).

And further in the case of U. S. v. Adamowicz, 82 Fed (2d) 288 (C. C. A. 2d), this circuit held that the Circuit Court of Appeals has no power to grant said extension.

13. Your petitioner thus found it impossible to condense the record within the time allowed and that neither the trial court nor this court had power to grant a further extension. In this dilemma your petitioner immediately sought relief in this court and on Thursday, October 22, 1936, Judge Manton signed an order to show cause why an extension should not be granted by this court or for such other relief as might be proper. The said motion was made returnable and was argued on Tuesday, October 27 before Judges Manton, L. Hand and Swan. It was there argued that under Rule IV of the Supreme Court in Criminal Cases, which provides that the Circuit Court shall have "supervision and control of the proceedings on the appeal including the proceedings relating to the preparation of the record on appeal" and that the Circuit Court may "modify any order made by the trial court or by any judge in relation to the prosecution of the appeal." This court might enter an order modifying the order made by Judge Patterson on [fol. 30] July 27, 1936 so as to enlarge the original period of extension. Thus by enlarging the time therein granted through the exercise of its power to modify, this court would enable the order of the trial judge to accomplish the result sought and give the defendant, your petitioner, the time that Judge Patterson would have allowed, had it been then apparent that more time would be required.

14. At said argument, this court declared itself powerless to grant further time and while expressing no opinion, the judges present indicated that they had grave doubt as to the power of the trial judge to grant a further extension. The Court further said that it did not consider Rule IV broad enough to grant the relief sought and thereupon unanimously suggested, as a compromise measure that,

under the circumstance of my case, in order to avoid any jurisdictional question, an application be made to the trial judge for an order settling the typewritten stenographer's minutes of the trial as the bill of exceptions and that thereafter an application might be made to this court for time to prepare, agree upon, and print the condensed record, under Rule IX, in Criminal Cases, which provides: "The appellate court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate."

A. 15. Judge Hand, at this time stated in substance, "I do not believe that you will oppose such an application, Mr. Brower." Mr. Brower stated that he might oppose this application. Whereupon, Judge Hand said in substance, "I think that upon reconsideration, you will withdraw your opposition." And Judge Manton said
A. in substance, "That is the direction of this court."

16. Pursuant to this suggestion, an order to show was [fol. 31] obtained from Judge Patterson on the following day, Wednesday, October 28th, for an order to settle the stenographer's minutes as the bill of exceptions. This motion was argued on the morning of Thursday, October 29th and Mr. Brower and Mr. Tompkins submitted a memorandum in opposition thereto in which they contended that Judge Patterson had no power to sign the bill of exceptions in the form presented since it was not in condensed and narrative form as prescribed by Rule 8 of the Supreme Court. The Government cited as authority the following cases:

Linn v. U. S., 251 Fed. 476;
Chicago v. Le Moyne, 119 Fed. 662;
Fraina v. U. S., 258 Fed. 28;
Rosen v. U. S., 271 Fed. 651;
Barbour Asphalt Co. v. Standard Co., 275 U. S. 372.

Judge Patterson reserved decision in order to give your petitioner an opportunity to submit an answering memorandum which was done at 4 o'clock the same afternoon. In said answering memorandum, it was pointed out that in all of the cases cited by the Government, the appeal was heard on the merits, although, the practice was condemned

and it was argued that since the procedure had been suggested by this court and that since your petitioner intended to complete a condensed record for the use of this court, and had so stated to this court, that every objection to the settling of the bill of exceptions in the form presented would be cured.

17. The following morning October 30, 1936 at 9:30 a. m. Mr. Silberman and Mr. Stern appeared before Judge Patterson's secretary to ascertain the disposition of this application. They thereupon learned that Judge Patterson had signed the order settling the bill of exceptions in the form presented, after considering your petitioner's memorandum and that thereafter he had stricken out his name and denied the motion. Thereupon, your petitioner, together with Mr. Silberman and Mr. Stern appeared before Judge Manton [fol. 32] in Chambers and discussed what had transpired. Whereupon, Judge Manton requested Mr. Brower and Mr. Tompkins to appear before him, which was immediately done. Judge Manton thereupon stated to Mr. Brower that it was his recollection that there was to be no opposition to your petitioner's application since it was in the nature of a compromise and he further stated that he would attempt to convene the court that afternoon to see what could be done.

18. Thereupon, at Judge Manton's direction, your petitioner, Mr. Silberman, Mr. Stern, Mr. Brower, and Mr. Tompkins, appeared in Judge Manton's chambers at 2:30 that afternoon. This was Friday, October 30th. Judge Manton had been unable to convene the court but Judge Patterson, the trial judge, was present and an informal conference was held. At this time Judge Patterson was informed that the extension expired on November 1st, which was a Sunday and he thereupon stated in the presence of Mr. Brower and Mr. Tompkins that he felt that there might be a compliance with Rule 8, if your petitioner, together with Mr. Silberman and Mr. Stern would over the weekend delete the colloquy of counsel from the typewritten stenographer's minutes since there would then be a condensation. He thereupon suggested that we appear before him on Monday, November 2nd since the time expired on a Sunday and Mr. Brower and Mr. Tompkins agreed to appear before Judge Patterson without a formal notice or order to show cause.

19. Thereupon, your petitioner, together with Mr. Silberman and Mr. Stern, spent the weekend in going through the voluminous record and striking all colloquy of counsel therefrom with a red pencil. These deletions reduced the minutes by some 700 pages.

20. Thereupon on Monday, November 2nd at 9:30 in the morning, a motion was made before Judge Patterson to [fol. 33] settle the typewritten minutes thus condensed as the bill of exceptions. Mr. Brower and Mr. Tompkins opposed this application for the reason that it was filed out of time, citing as authority Maresca v. U. S. 277 Fed. 727 (C. C. A. 2d), cert. den. 257 U. S. 657 which case is a direct authority for the proposition that when the last day for filing a bill of exceptions falls on a Sunday, the appellant does not have the next court day. In view of this case, Judge Patterson stated that he was powerless to grant our application and suggested that we might apply to this court for a writ of mandamus compelling him to settle the bill of exceptions as presented within time.

20. We immediately examined the law and found that the Maresca case was decided prior to Rule XIII of the Supreme Court in Criminal Cases, which rule excludes Sunday in computing time. We, thereupon, reappeared before Judge Patterson and asked him whether he would listen to a reargument. We stated that we felt that if this court would issue a writ of mandamus, he could be convinced to grant the application. Accordingly, the application was renewed before Judge Patterson in the presence and with the opposition of Mr. Brower and Mr. Tompkins. Judge Patterson granted the motion and signed an order settling the stenographer's minutes as condensed as the bill of exceptions. Judge Patterson stated that error might have been committed and that he did not wish to deprive your petitioner of his appeal. Accordingly, the bill of exceptions and assignment of errors were filed with the clerk of the District Court for the Southern District of New York on the afternoon of November 2, 1936.

21. On November 16, 1936, Mr. Walter Brower moved this court for an order docketing this cause and dismissing the appeal herein for failure to file the bill of exceptions within time and for the reason that the bill of exceptions as [fol. 34] filed did — comply with Rule IX of the Supreme

Court in Criminal Cases. This motion was granted on November 26, 1936. No written opinion was rendered.

22. At the argument of said motion, it was urged on behalf of your petitioner that as a matter of law, the bill of exceptions herein was filed within time and that while it was not strictly in the proper form, the requirements of Supreme Court Rule 8 are not jurisdictional and in the circumstances the appeal should not be dismissed without a hearing on the merits.

23. It was argued by the Government that the rule requiring condensation is jurisdictional in view of the new Supreme Court Rules in Criminal Cases (28 U. S. C. A. following 723 a).

24. Your petitioner respectfully urges that the new rules in Criminal Cases do not render the form of a bill of exceptions a jurisdictional defect. Bills of exceptions were formerly governed by Supreme Court Rule 8. The new Rules in Criminal Cases provide (Rule IX) that "Bills of exceptions shall conform to the provisions of Rule 8 of the Rules of the Supreme Court of the United States." This provision, therefore, has the identical effect as if the new rules provided that the form of bills of exceptions shall be "as heretofore." Moreover, Rule 8 itself contemplates a bill of exceptions that is not in condensed and narrative form since it reads "save as a proper understanding of the questions presented may require that parts of it be set forth otherwise."

25. Your petitioner respectfully states that this Court has the power to determine in which cases to apply the foregoing provision of Rule 8.

26. Your petitioner further states that he can find no reported case in which this circuit has dismissed an appeal without considering the merits for a defect in the form of [fol. 35] the bill of exceptions and that since the bill of exceptions is in the form suggested by this Court and in view of the further fact that there is some measure of compliance with Rule 8 in that the bill of exceptions is in condensed, though not in narrative form, the dismissal of the appeal herein is too harsh a penalty.

27. Your petitioner further states that this court has rendered no written opinion stating whether the dismissal was for the reason that: (a) the bill of exceptions was not filed within the time allowed; (b) the bill of exceptions was not in proper form, a jurisdictional defect; (c) the bill of exceptions was not in proper form and although not jurisdictional the court's discretionary power would not be exercised in petitioner's behalf; (d) this court would hear the appeal save for the jurisdictional defect in form; (e) or for a combination of the aforesaid reasons.

28. Your petitioner further alleges that he is desirous of, and intends to petition the United States Supreme Court for a writ of certiorari reviewing this court's action in dismissing his appeal and further states that he has been advised that the granting of the writ in the absence of a ground of decision in this court is highly improbable. In view of the novelty and importance of the legal propositions involved, it is respectfully urged that it is desirable that this court indicate the ground of its decision, so that a review may be had.

Wherefor- your petitioner respectfully prays:

1. That this Honorable Court may grant your petitioner a rehearing on the motion to dismiss the appeal herein, or in the alternative, that this Court render a written memorandum, stating the grounds of said dismissal.

2. For such other and further relief as to this Court may seem just and proper in the premises.

Wherefor- your petitioner will ever pray, etc.

Reginald P. Ray, Petitioner.

Dated December 9th, 1936.

[fol. 36] UNITED STATES OF AMERICA,
Southern District of New York, ss:

Richard E. Silberman, of full age, being duly sworn, according to law, upon his oath deposes and says:—

I am the Richard E. Silberman mentioned in the foregoing petition.

I have read the said petition and the fact, matters and things therein contained, so far as they relate to my acts

are true and so far as they relate to acts of others, I believe them to be true.

Richard E. Silberman.

Subscribed and sworn to before me this 9" day of December, 1936. Mary E. Cunningham, Notary Public. (Seal.)

[fol. 37] UNITED STATES OF AMERICA,
Southern District of New York, ss:

Benjamin L. Stern, of full age, being duly sworn, according to law, upon his oath deposes and says:—

I am the Benjamin L. Stern mentioned in the foregoing petition.

I have read the said petition and the facts, matters and things therein contained, so far as they relate to my acts are true and so far as they relate to acts of others, I believe them to be true.

Benjamin L. Stern.

Subscribed and sworn to before me this 9" day of December, 1936. Mary E. Cunningham, Notary Public. (Seal.)

[fol. 38] UNITED STATES OF AMERICA,
Southern District of New York, ss:

Reginald P. Ray, of full age, being duly sworn, according to law, upon his oath deposes and says:—

I am the petitioner in the foregoing petition named and I am acting as my own counsel in the conduct of the appeal herein.

I have read my said petition and the facts, matters and things therein contained, so far as they relate to my acts are true and so far as they relate to acts of others, I believe them to be true.

My said petition is filed in good faith for what I verily believe to be just and legal cause and it is not intended for the purpose of delay.

Reginald P. Ray.

Subscribed and sworn to before me this 9th day of December, 1936. Mary E. Cunningham, Notary Public. (Seal.)

[fol. 38½] [File endorsement omitted.]

[fol. 39] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

against

REGINALD P. RAY, Defendant-Appellant

Before Manton, L. Hand and Swan, Circuit Judges

Appeal from the United States District Court for the Southern District of New York. Defendant was convicted for violations of the Mail Fraud Statutes and Conspiracy (18 U. S. C. A. §§ 338,88). Motions for reargument of motions to correct the record; also to dismiss appeal. Motion to correct the record denied; appeal dismissed.

Walter Brower, Esq., Special Assistant to the Attorney General of the United States.

Reginald P. Ray, Appearing in Person.

OPINION—Filed December 22, 1936

Per CURIAM:

The appellant was convicted of violations of the Mail Fraud Statute and conspiracy (35 Stat. 1130; 35 Stat. 1096; 18 U. S. C. A. §§ 338,88) and appeals from the judgment entered. The trial lasted eight weeks; the testimony comprised about 4,000 pages and there were 500 exhibits received in evidence. The bill of exceptions was not settled and filed within the 30 days allowed by Rule IX of the Rules [fol. 40] of Practice and Procedure in Criminal Cases. An extension was granted by the trial judge up to and including the 1st of November, 1936, which was a Sunday.

The appellant says that financial difficulties made it impossible for him to engage counsel to prepare the record on appeal and he endeavored to do so personally. He is a member of the bar but not engaged in active practice. In the first week of August, 1936, he received the assistance of two newly admitted members of the New Jersey bar who were to prepare his bill of exceptions, the record on appeal and the brief of argument. Unsuccessful efforts were made toward an agreement with the prosecutor as to the condensation of the record and on October 20, 1935, realizing that no condensation of the record could be agreed upon within

the time allowed, appellant applied to the trial judge for an order to further extend the time within which to settle and file the bill of exceptions. The trial judge indicated a willingness to do so but upon investigation it was found that Rule IX of the Criminal Rules gave no power to grant such extension after the 30 day period had elapsed. Yep v. United States, 81 Fed. 2, 637 (C. C. A. 10); Gallagher v. United States, 82 Fed. 2, 721 (C. C. A. 8); Wolpa v. United States, 84 Fed. 2, 829 (C. C. A. 8). Nor does this court have power to grant such extension. United States v. Adamowicz, 82 Fed. 2, 288 (C. C. A. 2).

The appellant contends it was impossible, within the remaining time before November 1, to condense the record or reduce it to narrative form as required by Rule VIII of the Supreme Court rules. The stenographer's minutes, reduced by striking out some 700 pages of colloquy of coun- [fol. 41] sel were presented to the trial judge who on November 2, 1936, settled it as the bill of exceptions.

In its presented form the bill was insufficient, but counsel contends that this court has power to cure this defect under the authority of Rule IX providing:

"The appellant court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification, or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate."

The motion to so correct the record was made simultaneously with this motion to dismiss.

If the bill of exceptions is sufficient, its settlement on the day after Sunday (November 1, 1936) would be sufficient. Rule XIII, Criminal Rules and Practice. A bill of exceptions must be settled in accordance with Supreme Court Rule VIII which requires that

"Only so much of the evidence shall be embraced • • • as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise."

By the assignment of errors, appellant raised the question of an alleged error made below in failing to dismiss for lack of evidence to support the indictment. To examine such alleged error requires an examination of all the evidence, but to comply with Rule VIII the evidence must be reduced to narrative. In Barber Asphalt Co. v. Standard Asphalt Rubber Co. (275 U. S. 372), the court held a cause could be remitted to the district court by the Circuit Court of Appeals to conform a transcript to Equity Rule 75(b). In the appellant's case, however, Rule IX of the Criminal Rules of Practice and Procedure imposes a time limit upon [fol. 42] the settlement of the bill of exceptions which cannot be enlarged. If the bill of exceptions were remitted to the trial judge, he would be powerless to correct, amend or resettle it for the time to do so has expired.

The provision of Rule IX authorizing the Circuit Court of Appeals to entertain a motion by either party for the correction, amplification or reduction of the record filed with the appellate court or issue directions to the trial court in relation thereto would not authorize us to do so with reference to the bill of exceptions. We may correct a record so as to properly reflect the proceedings in the district court by adding papers not certified by the clerk or striking out some which may not be necessary. We may, of course, correct our own record if it is not stated properly.

The bill of exceptions, however, is determined and settled by the district judge alone and we may not correct or change it. The trial judge can no longer act to put the evidence in narrative form and we have no power to order him so to do. We have the power to strike out the bill of exceptions for noncompliance with the rule (Allen Gasoline Co. v. Franklin Fire Ins. Co., 65 Fed. 2, 609 [C. C. A. 9]), whose purpose is to expedite appeals. This appellant had four months and has offered insufficient excuses for his delinquency. The bill of exceptions was insufficient. Allen Gasoline Co. v. Franklin Fire Ins. Co., supra. See, Fraina v. United States, 255 Fed. 28 (C. C. A. 2); McNamara v. Cerf, 4 Fed. 2, 997 (C. C. A. 2).

The motion to amend the record is denied and the motion to dismiss the appeal is granted.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER DENYING MOTION FOR REARGUMENT—Filed December 22, 1936

A motion having been made herein by counsel for the appellant for a reargument of the motions to correct the record and to dismiss the appeal;

Upon consideration thereof it is

Ordered that said motion be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 44] [File endorsement omitted.]

[fol. 45] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 46] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.